REMARKS

Claims 1-30 are pending in this application. All of the pending claims are subject to restriction and/or election requirement.

The Examiner objected to claims 5, 10, 12-24 for improper multiple dependency. Applicants have amended claims 5 and 10 to depend on claim 1 and amended claim 12 to depend on claim 6. The Examiner also objected to claims 27-30 for being written in non-statutory subject matter form under 35 U.S.C. § 101. Applicants have canceled claims 27-30 and re-written them in proper method claim format in accordance with § 101 as claims 31-34. Claims 2, 6 and 9 have also been amended to correct typographical mistakes. It is believed that no new matter has been added. Claims 17-30 are provisionally withdrawn in the event the restriction requirement is maintained.

Unity of Invention - Restriction Requirement

The Examiner has issued a Restriction Requirement to the following claims:

Group I, claim(s) 1-16, drawn to a method for identifying an agent that modulates Stat3 through modulating TEL/Etv6 activity.

Group II, claim(s) 17, drawn to a mammalian cell capable of expressing TEL/Etv6 polypeptide, its binding partner and a reporter gene construct.

Group III, claim(s) 18 and 19, drawn to a method of inhibiting Stat3 expressing cancer cell proliferation with a TEL activator.

Group IV, claim(s) 20-28, drawn to a method of inhibiting cytokine sensitive cancers with a TEL activity inhibitor.

The examiner found that the present claims relate to "modulatory agents for TEL/Etv6 polypeptide and methods of identifying or using them." The Examiner agreed that unity of invention may be found where a technical relationship involving one or more of the same technical features of the claims exists, but argued that TEL/Etv6 polypeptide modulatory agents are already known and that TEL and Stat3 are interrelated through Stat5 is also known, it is expected that modulating TEL would affect Stat3 activity. The Examiner cited Chakrabarti et

al., *Biochem. Biophys. Res. Comm.*, (1999) 264:871-877 and Dong et al., *Blood* (2002) 99(8):2637-2646 in support of these arguments. In addition, the Examiner argued that Groups I, III and IV use different method steps and are intended for different outcomes and populations while method of Group I and mammalian cell of Group II may be practiced using a different product and method step. Consequently, the Examiner argued, the claims lacked a special technical feature over the prior art and therefore lacked unity of invention.

Applicants respectfully traverse the restriction requirement. Contrary to the Examiner's claim, neither Charkrabarti et al. nor Dong et al. discloses that "TEL and Stat3 are interrelated through Stat5". Although Chakrabarti et al. discloses that "the central region [of TEL] involves in the recruitment of a repression complex, including SMRT and mSin3A" in mediating transcription repression and Dong et al. discloses that "SMRT remained bound to STAT5b-RARα at physiologic concentrations of [all-*trans* retinoic acid]" and that "STAT5b-RARα augmented STAT3 transcriptional activities, whereas STAT5b inhibited it", these relationships are too tenuous to disclose the role of TEL/Etv6 modulators in inhibiting or enhancing Stat3 activities and Stat3-dependent or cytokine sensitive cell proliferation. The fact that SMRT associates with TEL in mediating transcription repression, and that it also binds to STAT5b-RARα at specific level of all-*trans* retinoic acid in suppression of gene transcription by RAR/RXR does not amount to a disclosure or suggestion that SMRT modulates (i.e., activates or inhibits) TEL/Etv6 or STAT5b or STAT5b-RARα so as to enhance or inhibit STAT3 activities and/or STAT3-dependent or cytokine sensitive cell proliferation.

Therefore, the role of TEL/Etv6 modulator in Stat3 activity and Stat3-dependent and cytokine sensitive cell proliferation is a novel special technical feature which exists among all of the claims of Group I, III and IV. Contrary to the Examiner's finding that the method steps are different and the intended populations and outcomes are different, the claims of Groups I, III and IV all comprise the use of TEL/Etv6 modulators to treat or modulate Stat3 expressing or cytokine sensitive cell proliferation. Consequently, Groups I, III and IV are linked by a novel special technical feature so as to provide a unity of invention. Group I and Group II are similarly linked by the novel special technical feature of TEL/Etv6 polypeptide and its binding partner (e.g., Stat3).

In the event that the Examiner maintains the Restriction Requirement, and reserving all rights, including the right to reinstatement or rejoinder in the event the restriction requirement is withdrawn or a generic claim is allowed, and/or the right to pursue any non-elected inventions in divisional applications, Applicants provisionally restrict to Group I, claims 1-16, drawn to a method for identifying an agent that modulates Stat3 through modulating TEL/Etv6 activity.

Election of Species

The Examiner also found that the application contains (1) RNAi (2) antibody or antibody fragment and (3) inhibitor for TEL and binding partner as patently distinct species of inhibitor of Tel activity within claims 20, 21, 27 and 28 of Group IV because they recite mutually exclusive characteristics and are not obvious variants of each other based on the current record. The Examiner also argued that these species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries), that prior art applicable to one species would not likely be applicable to another species and that the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 112, first paragraph. Therefore, the Examiner required Applicants to elect a single disclosed species for prosecution if no generic claim is finally held to be allowable. Because the generic claims share a novel special technical feature, for the reasons stated above, the requirement for election of species should likewise be withdrawn.

However, in the even that the restriction is maintained, Applicants have provisionally restricted to Group I. It is believed that no election of species is suggested or required in connection with Group I.

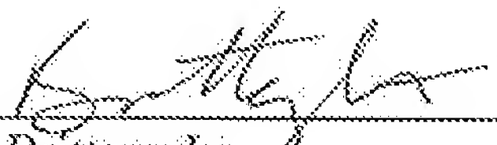
CONCLUSION

Applicants respectfully request withdrawal of the restriction requirement. The Examiner is invited to telephone Applicant's attorney at anytime should there be any questions.

As this response is filed within one month of the mailing date of the restriction requirement, it is believed no fees are required. If this is not correct, however, please charge any additional fees, or credit any overpayment, to Deposit Account No. 50-4255.

Respectfully submitted,

Date May 12, 2008



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